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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 26 of the
Cable Television Consumer Protection
and Competition Act of 1992

Inquiry into Sports Programming
Migration

PP Docket No. 93-21

REPLY COMMENTS OF

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SUMMARY

The record developed in this proceeding clearly establishes that there has been no significant "migration" of sports programming from broadcast television to subscription media. Consequently, the Commission's interim report to Congress should not recommend legislative intervention in the sports programming marketplace.

Professional sports leagues, college athletic conferences, broadcast networks, and non-broadcast sports programmers uniformly report that national and regional sports networks have "supplemented not supplanted" broadcast coverage of relevant professional sports events and major college football and basketball games. At the same time, the national and regional sports networks have extended television coverage to collegiate athletic conferences and to sports events, particularly women's sports, which traditionally have been ignored by broadcasters. The net result has been an exponential increase in the amount and diversity of televised sports programming, without a significant reduction in the quantity or quality of broadcast sports programming.

Attempts by the Association of Independent Television Stations ("INTV") and the National Association of Broadcasters ("NAB") to infer a broad and increasing pattern of migration based on isolated reports of cable carriage of sports events previously televised by broadcasters are contradicted by the facts. In the vast majority of such cases, national and

regional sports networks began carrying the events in question only after broadcasters dropped or declined to televise those events in favor of network or syndicated entertainment programming perceived to have broader audience appeal. Where broadcasters independently decide to reduce their coverage of particular sports events -- and national or regional networks carry those events rather than allow them to go untelevised -- the public clearly benefits and the resulting "movement" of those events from broadcast television to subscription media "cannot properly be considered 'migration.'"

The record also confirms that regional sports networks serve the public interest by providing coverage of local sports events which otherwise would not be televised and by producing large quantities of locally originated programming. Finally, Affiliated Regional Communications, Ltd. ("ARC") attempts to minimize the cost to consumers and to maximize viewership by offering cable operators and other distributors financial incentives to carry its regional sports programming on basic or expanded basic tiers, and the vast majority of ARC's distributors do so.

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REPLY COMMENTS OF
AFFILIATED REGIONAL COMMUNICATIONS, LTD.

Affiliated Regional Communications, Ltd. ("ARC")
submits these reply comments in response to selected comments
in this proceeding. The record confirms that regional sports
networks have substantially increased the amount and diversity
of televised sports events without "siphoning" sports program-
ming from broadcast television. Consequently, the Commis-
sion's interim report to Congress should not encourage legis-
lative intrusion into the competitive marketplace for sports
programming.

Preliminary Statement

Based on its experience in providing regional sports
programming services to cable operators and other multi-

channel video programming distributors,¹ ARC concluded in its initial comments that "sports programming has not migrated substantially from broadcast television to cable programming services" and that "the development and expansion of regional sports programming services" have had positive "economic and social consequences." ARC Comments at 3-4. The comments and empirical data submitted by other parties in this proceeding -- including broadcasters, professional sports leagues, collegiate athletic conferences and their member schools, and

events only after broadcasters dropped or declined to carry those events in favor of network or syndicated entertainment programming perceived to have broader audience appeal. Although such cases may technically fall within the Commission's definition of "migration" -- i.e. "movement of sports programming from broadcast television to a subscription medium" -- they do so only because regional sports networks did not allow events dropped by the broadcasters to go untelevised for a period of time before carrying them. Clearly, where events otherwise would not be televised, the public benefits from "migration." The public also benefits from television coverage of local sports events and from the availability of locally originated programming produced by regional sports networks.

In short, the record reflects a dynamic marketplace in which the overall output of sports programming has increased exponentially, offering viewers a wider diversity of programming choices than ever before, without reducing broadcast sports programming. Under these circumstances, legislative action is unnecessary and unwarranted.

I. The Record Reflects No Substantial Migration Of Sports Programming From Broadcast Television To Subscription Media.

The Commission's Notice of Inquiry, FCC 93-77, released February 9, 1993 ("Notice") states that the first objective of its inquiry is "to develop an updated factual

record regarding the telecasting of sports events," particularly Major League Baseball ("MLB"), the National Football League ("NFL"), the National Basketball Association ("NBA"), the National Hockey League ("NHL") and college football and basketball. Notice at ¶¶4-5. The Notice states that a "significant reduction in the quality or quantity of sports programming available on free television, whether professional or collegiate, would be of great concern" to Congress and the Commission. Notice at ¶9, quoting H.R. Rep. No. 628, 102d Cong., 2d Sess. 125. The comments and empirical data submitted by the professional sports leagues and collegiate athletic conferences, as well as the broadcast networks and other broadcasters, confirm that there is no factual basis for such concern.

A. Professional Sports Programming

Comments submitted by the professional sports

[REDACTED]

Comments at 2 ("Cable exhibition of NHL hockey, however, has not taken the place of broadcast exhibition"). The professional sports leagues have provided substantial empirical data to support their conclusion that migration of professional

2. Major League Baseball

MLB reports that "[c]ontrary to popular belief, there has been a significant increase in the total number of broadcasts of Baseball games" since 1980:

[D]uring the upcoming 1993 season, Baseball clubs will present a total of 1,705 local over-the-air broadcasts -- 313 more broadcasts than were presented in 1980 (the base year that the Commission has selected in its Notice).

MLB Comments at 3, 6 and Exhibit C (emphasis in original).³ Thus, despite MLB's agreement with ESPN for national cable carriage of a Wednesday night MLB game-of-the-week, and the growth in regional sports network carriage of MLB games, local broadcast coverage of MLB games currently is at an all-time high. Comments of ESPN, Inc. ("ESPN") at 8-9.

In addition, more broadcast stations are televising regular season MLB games than ever before. The broadcast rights to MLB games usually are held by a local "flagship station," which then makes the broadcast available to stations in other areas as part of the flagship station's regional baseball "network." The number of stations participating in such regional baseball broadcast networks has increased 68 percent, from 110 stations in 1979 (data for 1980 were not available) to 185 in 1992. MLB Comments at 11 and Exhibit D.

³ Even excluding the broadcast television carriage attributable to the two expansion teams which joined MLB this year, there will be 192 more games televised on local broadcast stations this year than in 1980, representing an increase of over 13 percent. MLB Comments at 6-7.

Although falling ratings have led to a reduction in the number of MLB games televised on the national broadcast networks (MLB Comments at 16-17), the facts presented by MLB confirm that the net result of the "current mix" of broadcast and cable carriage of MLB games is an exponential increase in "the viewing options of Baseball fans...without diminution in the overall level of Baseball telecasts on broadcast television." Id. at 3. In short, "cable programming services have provided a valued supplement to -- and not a substitute for -- the telecasting of Baseball games by broadcast television." Id. at 4.

3. National Football League

Until 1987, NFL games were carried exclusively on broadcast television. NFL Comments at 12. In 1987, the NFL contracted with ESPN for eight Sunday night NFL games "only after the broadcast network that had originally televised them (ABC) indicated that it was no longer interested in doing so." Id. at 21. Because these were additional games, the NFL agreement with ESPN had no effect on the number of Sunday afternoon and Monday night games televised by the broadcast networks. Id. at 12.

Since that time, the NFL has expanded its schedule to add more games and has contracted with ESPN and TNT to provide additional Sunday night games. Id. at 12-13. However, the NFL agreements with ESPN and TNT require that Sunday

night games "be simultaneously available on broadcast television in the home city of the visiting team and, if the game is sold out, in the home city of the home team as well." Id. at 13. Moreover, the Sunday night ESPN or TNT game permits a national audience to view what "otherwise would have been available only on a regional basis" at best. Id. at 18. Thus, "the net effect of the NFL's cable package has been to significantly increase the amount of televised NFL football available, while retaining a full menu of games on broadcast television." Id. at iii.

4. National Hockey League

Until this year, the only NHL game appearing on a national broadcast network was the all-star game, which NBC has televised for the last four years. However, five Stanley Cup Playoff games will appear on ABC this year, marking "the first time in nearly two decades [that] a package of NHL playoff games will appear on network television." NHL Comments at 5. Those games are being broadcast because "ESPN purchased time on the ABC Television Network to distribute" those games and ABC agreed to do so as "a one-year experiment to see if the NHL is viable" as a national broadcast product. ESPN Comments at 9; NHL Comments at 5. Thus, the national broadcast of NHL games has been facilitated, rather than hindered, by subscription media.

existing broadcast coverage of SWC football and men's basketball games"); Comments of the Big East Conference ("Big East") at 4 and Appendix A ("more Big East basketball games were carried on broadcast television during the current season than were broadcast five years ago"); Comments of Atlantic Coast Conference ("ACC") at 1 (regional sports network "has not decreased existing broadcast coverage of ACC football and men's basketball games").

At the same time, regional sports networks have provided television coverage of sports events involving collegiate conferences and schools which have been unable to obtain

("PSN"), another ARC regional sports network); Comments of University of Denver at 2 ("broadcast television stations and networks have not expressed interest in televising the University hockey, basketball and volleyball games and other University sports events" carried on PSN).

In addition to providing television exposure to collegiate athletic conferences and schools unable to obtain broadcast coverage, regional sports networks have extended television coverage to different collegiate sports events which have been ignored by broadcasters. See, e.g., ACC Comments at 2 (HTS has extended "television coverage to a variety of ACC men's and women's sporting events other than football and men's basketball, for which broadcasters have shown no interest"); SWC Comments at 4 (SWC baseball, volleyball, tennis, swimming, and track and field events would not "receive television coverage but for HSE"); Big East Comments at 5 (cable sports networks have provided "television coverage of certain Big East sports events which broadcasters have not televised...including soccer and baseball"). Broadcasters only recently have begun to show interest in some of these events at the national championship level, providing further potential "reverse migration." See NCAA Comments at 14 (CBS contract includes rights to NCAA championships in swimming, diving and gymnastics).

In particular, national and regional sports networks have been instrumental in extending television coverage to collegiate women's sports events. See, e.g., ACC Comments at 3 ("HTS has been instrumental in providing television coverage of ACC women's basketball"); SWC Comments at 4 (28 of the 29 SWC women's basketball games televised in the last 3 years appeared on HSE, "including the SWC semi-finals and finals each year"); Big East Comments at 5 ("cable sports networks have provided coverage of several Big East women's basketball games").

Thus, the facts clearly demonstrate that cable carriage of collegiate sports events has not reduced broadcast coverage of major college football and men's basketball games, and has broadened television coverage of collegiate sports to include a variety of events and conferences never carried by broadcasters.

C. Broadcast Networks And Stations

Finally, comments submitted by the broadcast networks and other broadcasters echo the comments of the professional sports leagues and collegiate athletic conferences and further confirm that there has been no significant migration of sports programming. See, e.g., Comments of the National Broadcasting Company, Inc. ("NBC") at 2 ("NBC has not observed a trend of significant net loss of college and professional sports event coverage from free over-the-air

migration based on isolated reports that certain sports programming has moved from broadcast television to cable or other subscription media.⁴ However, closer examination of the examples provided by INTV and NAB reveals that in many cases there is no "migration" as defined by the Commission because the events being carried on subscription media were never carried on broadcast stations. In other cases, the "movement" of certain events to subscription media occurred only after broadcasters decided not to continue to carry those events and therefore "cannot properly be considered 'migration.'" NFL Comments at 5, 21-22. Finally, INTV's attempts to imply that regional cable contracts have caused reductions in the number of broadcasts of certain MLB teams are contrary to the facts reported by MLB and parties to the regional network contracts.

A. Subscription Carriage Of Events Dropped Or
Refused By Broadcasters Benefits Viewers
And Should Not Be Considered Migration.

The comments submitted by MLB, NFL, NHL and other parties demonstrate that "the vast majority of cases which

⁴ Comments submitted by the Wireless Cable Association International, Inc. ("WCA") essentially reargue WCA's position in the Commission's program access proceeding pursuant to Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), based largely on matters having nothing to do with the sports programming issues in this proceeding. See WCA Comments at 2-10 and nn.10-14. Other than reiterating that its regional network sports programming is available to and distributed by wireless cable operators, ARC will not respond to the WCA comments. See WCA Comments at 9 ("critical sports programming remains unavailable to wireless cable system operators").

some have characterized as sports programming 'siphoning' or 'migration' are in reality cases of 'abandonment' in which cable carries sports programming that broadcasters declined to carry." Comments of Time Warner Entertainment Company, L.P. at i. For example, INTV claims that "the most egregious example of sports siphoning" was the "shift" of Minnesota North Stars hockey games from KSMP-TV, which "had carried many of the North Stars' regular season away games" to pay-per-view "when the North Stars made the Stanley Cup Playoffs" in the 1990-91 season. INTV Comments at 2-3, 26-27; see also NAB Comments at 2; Notice at ¶17. However, according to the NHL,

Likewise, INTV implies that "migration" to cable is primarily responsible for a reduction in the number of broadcast White Sox games from 60 in 1980 to 48 today. INTV Comments at 23. According to MLR, however, WFLD-TV dropped its

the Rangers and Knicks, that it "did not intend to renew its contract for broadcast carriage of the Knicks and Rangers games when the existing agreement expired in 1989." Id. at 8. After unsuccessfully approaching WPIX (the other independent station in New York) about broadcasting the games previously broadcast by WWOR, MSGN "picked up the games, rather than see them lost entirely to viewers." Id. at 11. Had MSGN let the games go untelevised for a season before picking them up, there would have been no direct "movement...from broadcast television to a subscription medium" and no "migration" under the Commission's definition. See Notice at ¶2. However, viewers who otherwise would have been unable to see those games at all clearly benefited from what the Commission might technically consider "migration."

Other examples of alleged "migration" cited by NAB and INTV also resulted from abandonment by broadcasters of sports programming in favor of network or syndicated entertainment programming. NAB and INTV complain that only seven Philadelphia 76ers basketball games are available on local broadcast television while the remainder are carried by Prism, a regional sports network. NAB Comments at 2; INTV Comments at 28. However, Prism obtained television rights to 76ers away games only after "Philadelphia broadcasters lost interest" in televising those games. Comments of Rainbow Pro-

gramming Holdings, Inc. ("Rainbow") at 17. Likewise, the NHL contends that "[t]o the extent that broadcast exhibition [of NHL games] has diminished, it has been largely because of decisions by the broadcasters themselves." NHL Comments at 2.

B. The Facts Contradict INTV's Inference That Regional Network Agreements Caused Reduction of Broadcast Coverage of Certain MLB Teams.

INTV also implies that contracts between various MLB teams and regional sports networks are directly responsible for a reduction in the number of MLB games carried on certain broadcast stations. INTV Comments at 20-25. However, the facts as reported by MLB and the parties to those agreements simply do not support INTV's inference. See MLB Comments at 19 ("the growth in Baseball telecasts over RSN's [regional sports networks] has not come at the expense of over-the-air broadcasts").

In addition to the White Sox example discussed supra at 16, one of the most frequently cited instances of alleged "migration" is MSGN's acquisition of exclusive television rights to New York Yankee baseball games. See, e.g., Comments of NAB at 2 ("over 100 of the New York Yankee's games once were available on WPIX-TV, [but] in recent years most Yankee games have migrated to a pay cable service"); INTV Comments at 21-22; NYCDTE Comments at 4-5. However, MSGN

demonstrates in its comments that WPIX had dropped its coverage of Yankee baseball from 110 to 50 games long before MSGN acquired exclusive rights to televise Yankee games. MSGN Comments at 12-13. Moreover, since that time, MSGN "has retained -- and is continuing actively to seek -- broadcast outlets for carriage of at least 50 regular Yankee games per season." Id. at 12. Thus, the number of Yankee games currently televised is the same as the season preceding MSGN's acquisition of exclusive rights to Yankee games. Contrary to INTV's inference, MSGN's acquisition of exclusive television rights did not result in a reduction of existing broadcast carriage of New York Yankee games.

Other efforts by INTV to imply that regional sports network agreements caused a reduction in the number of broadcast games of certain MLB teams are equally unsupported by the facts:

1. Boston Red Sox -- INTV contends that Red Sox games have migrated from WSBK-TV to New England Sports Network ("NESN"), despite the fact that "the station is a part owner [and] hence benefits from NESN's coverage." INTV Comments at 21 n.13. Moreover, MLB reports that during "each of the past 10 years (including 1993) the Red Sox have presented 75 [over-the-air] telecasts" more than all but five other MLB teams. MLB Comments at 10 n.5.
2. Baltimore Orioles -- INTV implies that "the rise of pay cable sports channels," reduced the number of Orioles games on broadcast television from 57 to 50. INTV Comments at 23. However, MLB reports that "WMAR, an NBC affiliate, has consistently televised 50 games each season

since prior to the Orioles entering into a contract with HTS." MLB Comments at 19-20.⁶

3. Minnesota Twins -- INTV implies that regional cable is responsible for a decline in the number of Minnesota Twins games available on broadcast television from "73 games for the 1987 and 1988 seasons" to "only 38 games" this year. INTV Comments at 22-23. However, the holder of the exclusive television rights to the Twins games owns the local broadcast station carrying the games and a "cable sports channel," and thus determines whether particular games will be made available on broadcast or cable. Id. In any event, MLB reports that 61 Twins games will be aired on local broadcast television this season, not 38 as reported by INTV. MLB Comments at Exhibit B.

Thus, many of the examples of alleged "migration" offered by INTV and NAB either do not constitute migration under the Commission's definition, or technically fall within that definition only because the regional sports network served the interests of viewers by immediately picking up the sports programming abandoned by broadcasters rather than allowing the events involved to go untelevised. Moreover, there is no factual basis for INTV's inference that regional

⁶ It is often difficult for network affiliates such as WMAR to serve as a "flagship" broadcast station for MLB or other professional sports teams because coverage of night

network agreements have caused reduction in broadcast coverage of MLB games.

III. The Growth of Regional Sports Networks Has Resulted In Other Economic And Social Benefits.

As set forth above, regional sports networks have supplemented broadcast coverage of professional sports events and major college football and basketball games. They also have expanded television coverage to collegiate conferences and events, particularly women's sports events, which previously had not received broadcast exposure.⁷ Comments submitted by other parties have identified additional economic and social benefits resulting from regional sports network programming.

For example, the Texas Special Olympics ("Special Olympics") explains that HSE's coverage of their Summer Games "has resulted in substantial benefits for our organization, the participating athletes, and the viewing public." Special

⁷ This expanded television coverage has yielded substantial benefits to the colleges and universities. See, e.g., NCAA Comments at 5 ("increased publicity results in increased attention and loyalty from alumni...increasing annual giving and testamentary bequests," and enables the schools to attract more and better students and student-athletes); CAC Comments at 3 ("member schools... receive significant benefits from such increased television exposure [through regional sports networks] in their efforts to recruit students").